

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 25094 of 2004

Between:

M.Suseela, W/o G.Bheemanjaneyulu
R/o Polamagripalli Village, Seetharamapuram mandal,
Nellore District.

..... PETITIONER

AND

- 1 Joint Collector, Nellore,
Nellore District.
- 2 Revenue Divisional Officer Kavali,
Nellore District.
- 3 Mandal Revenue Officer Seetharampuram , Mandal,
Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ order or direction more particularly one in the nature of writ of Mandamus under Art. 226 of Constitution of india, declaring the order passed by the 1st respondent in his proceedings Rc.E.691/2004 dt. 25/11/2004 rejecting stay pending the appeal filed by the petitioner U/S 20(2) of AP. Public Distribution control order, 2001, against the order of the 2nd respondent in his proceedings Rc.J.3374/2004 dt. 27/10/2004 placing the petitioner under suspension on trivial grounds as illegal, arbitrary, unjust and without jurisdiction, set aside the same and stay the operation of the order of suspension dt. 27/10/2004 pending the appeal before the 1st respondent.

Counsel for the Petitioner: MR.P.SRIDHAR REDDY

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the admission stage made the following :

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ORDER:

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The petitioner was appointed as a Fair Price Shop Dealer. Her authorization was suspended by the 2nd respondent through order, dated 27.10.2004. The allegation against the petitioner is that she has supplied certain quantities of rice to the cardholders without coupons. Further allegation is that she did not settle the account for the rice meant for 'food for work'. On that basis, an inference was drawn that she diverted the essential commodities to black-market. The petitioner preferred an appeal before the 1st respondent. She also filed an application for grant of stay. The 1st respondent rejected the application for stay through order, dated 25.11.2004. Hence, this writ petition.

Heard learned counsel for the petitioner and learned Government Pleader for Civil Supplies.

The observation made by the 1st respondent in relation to the application for grant of stay reads thus:

"this appeal is taken on file but interim stay has not been granted by this Court".

The rest of the order deals with the reference to the factum of the appeal and calling for records from the 2nd respondent. The very purpose of conferring power on an appellate authority to pass interim order is to examine the matter and consider the feasibility of granting interim orders to protect the interest of the parties. If the authority is not inclined to pass interim orders, a semblance of reasoning needs to be given. Rejection of the application in the manner referred to above does not

conform to the ordinary tenets of exercise of appellate power.

The main allegation against the petitioner is that she supplied rice to certain cardholders without there being any coupons. It is not as if she supplied rice to anyone beyond their entitlement. It is not indicated as to when the petitioner was required to furnish the register in relation to rice meant for 'food for work'. In fact, a show cause notice was issued on the same day i.e.27.10.2004.

One basic infirmity with the order of suspension is that it was not indicated therein that it is a measure pending enquiry. Though inference can be drawn that it is a measure pending enquiry from the fact that a show cause notice was issued on the same day, the omission to indicate the same in the order of suspension becomes significant for the reason that Clause 5(4) of the A.P.Public Distribution System Control Order, 2001, mandates that before an order suspending or cancelling the dealership is passed, an enquiry has to be held. Admittedly, no such enquiry was conducted before the impugned order was passed.

For the foregoing reasons, the writ petition is disposed of and the order of suspension, dated 27.10.2004, passed by the 2nd respondent shall remain stayed, pending disposal of the appeal by the 1st respondent. There shall be no order as to costs.

31.12.2004

Jsu

To

- 1 Joint Collector, Nellore,
Nellore District.
- 2 Revenue Divisional Officer Kavali,
Nellore District.
- 3 Mandal Revenue Officer Seetharampuram , Mandal,
Nellore District.

4 2CCs to the G.P for Civil Supplies, High Court Buildings,
Hyderabad(O.U.T).

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